



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Ernest Guinn  
County Attorney  
El Paso County  
El Paso, Texas

Dear Mr. Guinn:

Opinion No. O-3002

Re: Necessity for a driver's  
bond in the transportation of  
children to and from a common  
school district, where the  
driver does not contemplate  
operating the bus in person,  
but through employees who are  
not themselves to be bonded.

We beg to acknowledge receipt of your letter  
of January 3 asking for an opinion from this Department upon  
the following case:

"The Trustees of the Smelter Common School  
District have submitted to me for approval, a bus  
drivers bond, executed by one E. P. Sanderson, as  
Principal, in the sum of \$2,000.00, purporting to  
comply with Article 2687-a of the Revised Civil  
Statutes.

"Attached to the bond is a contract entered  
into between Sanderson and the School Board, and from  
this it appears that Sanderson will not drive any bus  
personally, but that persons working for him will  
drive the school bus, as well as certain cars owned  
by him, as may be needed to transport the children.  
As a practical matter, this involves the use of two  
cars of Sanderson's, as well as the school bus, and  
Sanderson furnishes three of his cab drivers for  
this work. They are not a party to the bus drivers

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bond, and the only bond which he is to furnish is the one bond signed by himself. He proposes to use different drivers for this work.

"It is my opinion that Article 2687-a contemplates the execution of a bus drivers bond by each driver who is to drive the children to school, irrespective of the person or firm with whom the contract of employment may be made, and that the law contemplates the Trustees knowing the persons who will transport the children.

"For this reason I have refused to approve the bond as handed to me, and advised the Trustees that I would submit the question to your department for determination."

It is the opinion of this Department that you were right in declining to approve the bond as tendered to you.

The matter of the sufficiency of the bond is determined by a construction of Article 2687a of Vernon's Annotated Texas Statutes, which reads as follows:

"The trustees of any school district, common or independent, making provision for the transportation of pupils to and from school, shall for such purpose employ or contract with a responsible person or firm. No person shall be employed to transport pupils, who is not at least twenty-one years of age, and a competent driver of motor vehicles and sound in body and mind. All motor vehicles operated by school districts, directly or by contract, in the transportation of pupils shall be covered and so glassed or curtained at the sides and rear as to protect the pupils from the inclemencies of the weather, and shall at all times be equipped with efficient lights and brakes. The drivers of all school transportation vehicles shall be required to give bond for such amount as the Board of Trustees of the district may prescribe, not less than \$2,000.00, payable to the district, and conditioned upon the faithful and careful discharge of their duties for the protection of the pupils under their charge and faithful performance of the contract with (said) School Board; and they shall, before crossing

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any railroad or interurban railway tracks, bring their vehicles to a dead stop. Failure to stop before crossing such railway as provided herein shall forfeit the drivers contract and, in case of accident to pupils or vehicles the bond shall be forfeited and the amount and all right thereunder shall be determined by a court of competent jurisdiction."

We think this statute contemplates that the contract driver is the "driver" who is required by the statute to execute the bond. From this it further follows that the statute contemplates such contract driver shall actually operate the school bus, and for these reasons the statute would have to be complied with to result in a statutory bond.

It may be, and probably is true that a contract driver who has executed a bond would in a proper case be liable for the negligence of an unbonded employee driver, but this would be upon the principle of contract or common law liability and not that of statutory liability, whereas as above stated the statute contemplates a statutory bond and there is every good reason for requiring such statutory bond. See Robinson v. Draper (Tex.) 227 S.W. (2d) 181; Reeves v. Tittle, 129 S. W. (2d) 364.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Cecil Speer*

Cecil Speer  
Assistant

OS:AMM

APPROVED JAN 10, 1941

*Ernest Guinn*

ATTORNEY GENERAL OF TEXAS



*on 1/10/41*